SD428
.C8
S684
1995

# Southern Little Missouri And Cedar River National Grasslands

## Final Oil and Gas Leasing Environmental Impact Statement

## Record of Decision

Custer National Forest
Bureau of Land Management

August 1995

Property of
National FS Library
USDA Forest Service
240 W Prospect Rd
Fort Collins CO 80526

# SOUTHERN LITTLE MISSOURI AND CEDAR RIVER

# NATIONAL GRASSLANDS OIL AND GAS LEASING

# FINAL ENVIRONMENTAL IMPACT STATEMENT

## CUSTER NATIONAL FOREST

## BILLINGS, GOLDEN VALLEY AND SLOPE COUNTIES

## NORTH DAKOTA

## RECORD OF DECISION

Prepared by:

**U.S. DEPARTMENT OF AGRICULTURE - FOREST SERVICE**
**CUSTER NATIONAL FOREST**
**R-1, NORTHERN REGION**

**AUGUST 1, 1995**

**Responsible Officials**

FOREST SERVICE DECISION BY:

Nancy Curriden
Forest Supervisor
USDA Forest Service
Custer National Forest

BUREAU OF LAND MANAGEMENT
DECISION BY:

Larry G. Hamilton
ACTING State Director
Bureau of Land Management
Montana State Office

The United States Department of Agriculture (USDA) prohibits discrimination in its programs on the basis of race, color, national origin, sex, religion, age, disability, political beliefs and marital or familial status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (braille, large print, audiotape, etc.) should contact the USDA Office of Communications at (202) 720-5881 (voice) or (202) 720-7808 (TDD).

To file a complaint, write the Secretary of Agriculture, U.S. Department of Agriculture, Washington, D.C. 20250, or call (202) 720-7327 (voice) or (202) 720-1127 (TDD). USDA is an equal employment opportunity employer.

# TABLE OF CONTENTS


Page

I INTRODUCTION . . . . . 1

II FOREST SERVICE DECISIONS . . . . . 3

A. AVAILABILITY DECISION . . . . . 3

B. LEASING DECISION . . . . . 3

C. RATIONALE FOR THE AVAILABILITY AND LEASING DECISIONS . . . . . 10

D. FOREST PLAN AMENDMENTS . . . . . 17

III BLM DECISIONS . . . . . 18

A. LEASING NFS MINERALS . . . . . 18

B. RATIONALE FOR LEASING NFS MINERALS . . . . . 18

C. LEASING SPLIT ESTATE MINERALS . . . . . 19

D. RATIONALE FOR LEASING SPLIT ESTATE MINERALS . . . . . 19

IV PUBLIC INVOLVEMENT . . . . . 19

V ENVIRONMENTAL ANALYSIS . . . . . 20

VI ALTERNATIVES CONSIDERED . . . . . 22

A. AVAILABILITY ALTERNATIVES . . . . . 22

B. LEASING ALTERNATIVES . . . . . 22

VII LEGAL CONTEXT IN WHICH DECISIONS ARE MADE . . . . . 24

VIII FINDINGS REQUIRED BY OTHER LAWS, REGULATIONS, AND AGENCY POLICY . . . . . 27

IX ENVIRONMENTALLY PREFERRED ALTERNATIVE . . . . . 28

X MITIGATION . . . . . 29

XI MONITORING AND EVALUATION . . . . . 29

XII IMPLEMENTATION . . . . . 29

XIII APPEAL PROCEDURES . . . . . 30

XIV CONTACT PERSON . . . . . 31

APPENDIX - FOREST PLAN AMENDMENTS . . . . . A-1


# LIST OF MAPS AND TABLES


MAP R-1 VICINITY MAP OF EIS STUDY AREA . . . . . 2

TABLE R-1 STIPULATION AND LEASE NOTICE SUMMARY . . . . . 4

TABLE R-2 SUMMARY OF STIPULATED ACRES . . . . . 6

TABLE R-3 STIPULATIONS BY OIL AND GAS OCCURRENCE POTENTIAL . . . . . 13

## I. INTRODUCTION

The Federal Onshore Oil and Gas Leasing Reform Act (FOOGLRA) was enacted by Congress in 1987. The implementing US Department of Agriculture 36 CFR 228 and Department of Interior 43 CFR 3100 regulations were finalized and published in the Federal Register on March 21, 1990 and June 17, 1988, respectively. These regulations set forth the procedures by which the Forest Service and the Bureau of Land Management (BLM) will carry out their statutory responsibilities in the issuance of oil and gas leases.

On June 10, 1987 the Record of Decision (ROD) for the Custer National Forest Land and Resource Management Plan (Forest Plan) and accompanying Final Environmental Impact Statement (FEIS) was signed. This long-range, integrated land and resource management plan provides integrated guidance for all natural resource management activities as required by the National Forest Management Act of 1976. Forest Plan decisions were based on the analysis and alternatives displayed in the Forest Plan FEIS. The Forest Plan as amended established goals and management direction for the entire Forest, including various stipulations that may be attached to leases. However, since the Forest Plan predates the implementing regulations for FOOGLRA, a revisiting of the Forest Plan decision is required to reassess its appropriateness on a site specific basis. The Southern Little Missouri and Cedar River FEIS expands upon the Forest Plan by incorporating new information and new Forest Service management direction, as well as additional alternatives not considered in the Forest Plan. It discloses in a site-specific manner the effects of oil and gas leasing, exploration, development, abandonment, and reclamation within the project area.

This ROD documents the two Forest Service decisions that result from the above analysis: first, which lands will be administratively available for oil and gas leasing in accordance with 36 CFR 228.102(d); and second, which lands specifically are authorized for the BLM to offer for lease in accordance with 36 CFR 228.102(e). These decisions incorporate the lease terms and stipulations that have been determined necessary to mitigate effects to surface resources. These measures are based on analyses documented in the The Southern Little Missouri and Cedar River Oil and Gas Leasing FEIS and the Custer Forest Plan FEIS. Refer to Map R-1 for the location of the project areas.

This ROD also documents the BLM decision to use the Final Southern Little Missouri and Cedar River Oil and Gas Leasing Environmental Impact Statement as its National Environmental Policy Act of 1969 (NEPA) compliance document for leasing National Forest System lands and split estate lands within the administrative boundaries of the southern portion of the Little Missouri National Grassland. The BLM decision includes concurrence with the selected alternative.

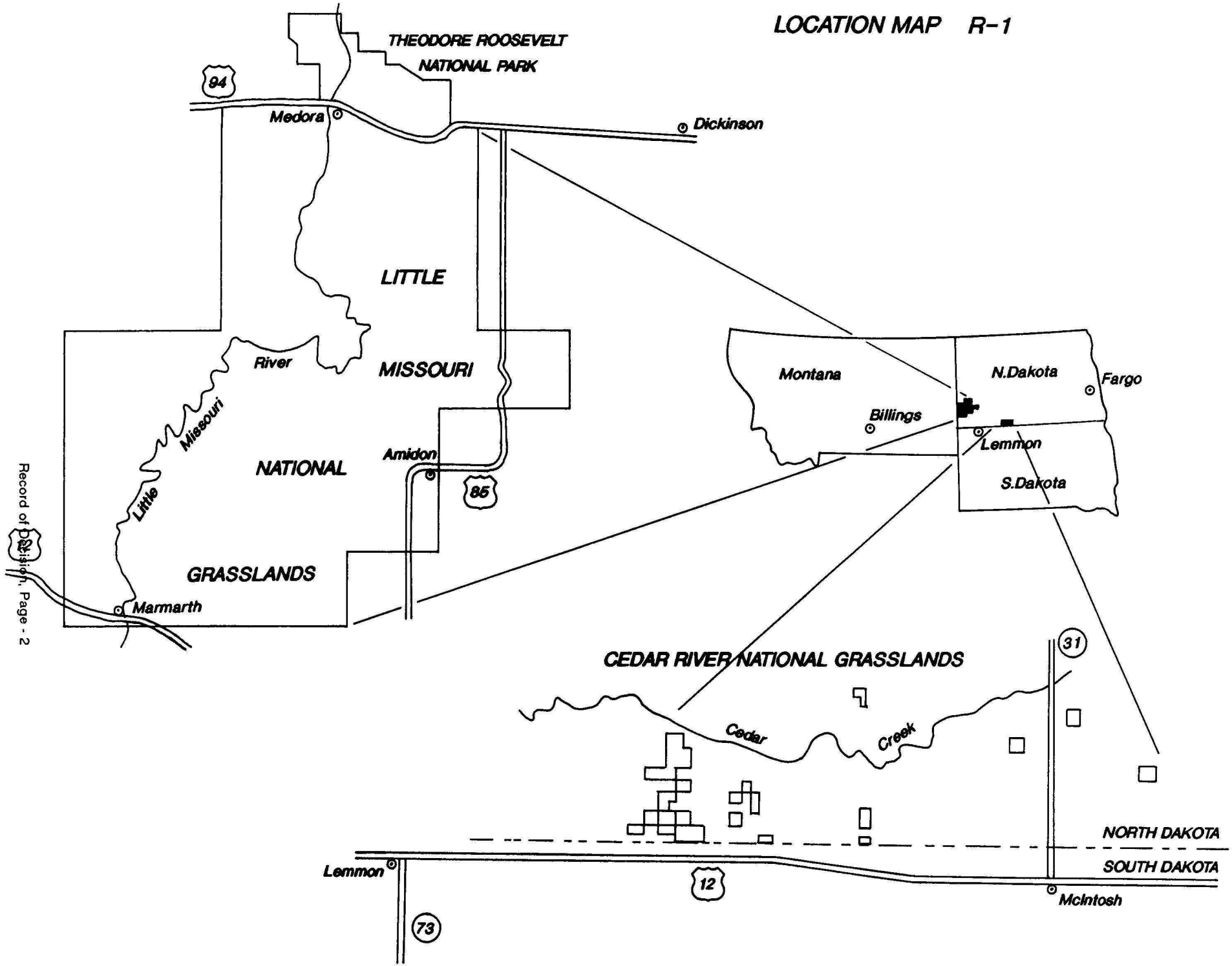
These decisions were guided by the results of a comprehensive analysis that considered the cumulative effects of activities on the resources, economics, and social patterns of this highly sensitive area. A great deal of public input was expressed both in favor of leasing and against leasing in this portion of North Dakota. Although this input may not necessarily reflect the opinion of all affected or interested people, the decisions were made in an attempt to balance the conflicting viewpoints that were expressed.

Decisions of this nature, which may have a lasting effect on a very significant area, do not come easily. As such, all of the pertinent information and valid comments received were taken into consideration in making these decisions.

Surface resource concerns are high in this area. Oil and gas occurrence and development potential are also high, which relate heavily to the economic well-being of this country. It is important for the reviewer to know that these factors were strongly considered in making a decision which attempts to arrive at a balance between conflicts, public opinion, opportunities, and resource capability.

Lastly, this ROD documents the Forest Service decision to amend the Custer Forest Plan regarding which lands are administratively available for oil and gas leasing and where the selected alternative differs from Forest Plan standards and guidelines for specific management areas and resources.

# LOCATION MAP R-1



There is a small land exchange within the Southern Little Missouri portion of the project area that is currently being processed. There are approximately 775 surface acres that would come into Federal ownership and just under 800 acres of National Forest System (NFS) lands that will go into private surface ownership. Even though the mineral estates beneath these lands will not be exchanged, the Federal minerals beneath the NFS lands have been segregated by the BLM as per Forest Service request. Consequently, these minerals are not currently available for leasing. These mineral estates are located in Township 135 North, Range 101 West, Section 22, NW¼ NE¼, and Township 136 North, Range 101 West, Section 10 (all) (refer to Map II-4 in the FEIS).

If this exchange is completed, then the leasing decision on these lands becomes the responsibility of the BLM because at that time, these Federal minerals will have private surface over them (split estate). If the exchange is unsuccessful, then the leasing decision would be the responsibility of the Forest Service.

The FEIS included these lands in the leasing analysis, and Map II-4 displays how these acres will be leased when they are made available.

## II. FOREST SERVICE DECISIONS

The decisions that I am making in this document cover those Federal minerals beneath NFS lands identified on Maps I-1 and I-2 in the FEIS, covering approximately 238,700 acres. Approximately 65,270 acres of these lands are presently under lease. The decision contained in this document will also apply to these lands when the current leases expire and the lands are again put up for lease.

To summarize my decisions, I am making all of the Federal mineral estate under NFS lands administratively available for leasing, and am authorizing most of these lands for lease with the stipulations as described below. This is summarized in Tables R-1 and R-2.

### A. AVAILABILITY DECISION

I have selected **Alternative D-3 as the administrative availability decision**. This alternative makes all NFS minerals available for leasing with the stipulations identified below under the specific leasing decision. This is a change from the preferred alternative in the Draft Environmental Impact Statement (DEIS) where Limber Pine, Pretty Butte, Black Butte, and Amidon Administrative Site would not have been available for leasing. While these areas are now administratively available for leasing, they will be leased with a No Surface Occupancy (NSO) stipulation (see below for details). Please refer to Section VII of this Record of Decision for a description of the various stipulations.

### B. LEASING DECISION

It is my decision to implement Alternative E-7 as the leasing decision for specific lands as displayed on Map II-4 in the FEIS. I have modified Alternative E-7 to change the foreground viewshed around the ponderosa pine stands from CSU to NSO. The following is a brief description of the components of this decision. The location of these components are displayed on maps in Chapter III of the FEIS and in the project file.

As part of my decision I will delay authorizing the BLM to lease Federal tracts of land under my jurisdiction within Township 137 North, Range 101 West, Township 137 North, Range 102 West and Township 138 North, Range 102 West. This delay is to allow the completion of a proposed mineral exchange between the Federal government and a private mineral estate owner which will facilitate the management of these NFS lands. This delay will be in effect until the exchange is completed or the exchange proposal is withdrawn, but will not exceed one year from the date of this ROD.

Following the completion or withdrawal of this proposed exchange, the unleased Federal tracts within these Townships will be authorized for lease with the stipulations described below.

## TABLE R-1

### Stipulation and Lease Notice Summary

| RESOURCE | STIPULATION OR LEASE NOTICE | AREA/RATIONALE FOR THE STIPULATION OR LEASE NOTICE |
|---|---|---|
| IRA | NSO | To maintain roadless character within Inventoried Roadless Areas |
| RNA | NSO | Prohibit activities within Research Natural Areas |
| SIA | NSO | Prohibit activities within Candidate Special Interest Areas |
| SIA | CSU | Minimize disturbance within Nominated Special Interest Areas |
| Wildlife | NSO | Within 100' of prairie dog towns |
| Wildlife | NSO | Within ½ mile of ferruginous hawk, golden eagle and prairie falcon nests |
| Wildlife | Timing | Within 1 mile of ferruginous hawk nests, March 1 through August 1 |
| Wildlife | NSO | Prohibit activities within bighorn sheep habitat |
| Wildlife | NSO | Prohibit activities within ¼ mile of sage and sharptail grouse dancing grounds |
| Wildlife | Timing | Within 2 miles of sage grouse dancing grounds, March 1 through June 15 |
| Wildlife | Timing | Within 1 mile of sharptail grouse dancing grounds, March 1 through June 15 |
| Vegetation | CSU | Protect known sensitive and watch plant populations |
| Wildlife | NSO | Prohibit activities near isolated clay buttes within antelope winter range |
| Wildlife | Timing | Antelope winter range, January 1 through March 31 |
| Wildlife | CSU | Minimize disturbance to mule deer habitat (canyonlands) |
| Vegetation | NSO | Protect ponderosa pine tree stands |
| Riparian | CSU | Minimize disturbance to riparian areas, including the aquatic and riparian ecosystems |
| Woody Draw | NSO | Minimize disturbance to woody draws |
| Visual | NSO | Within the foreground seen area of the Little Missouri River and the ponderosa pine stands |
| Visual | CSU | Remaining Little Missouri River seen areas and NFS access routes |
| Recreation | NSO | Prohibit activities within Burning Coal Vein campground |
| Recreation | Timing | Within the foreground seen area of the Little Missouri River, including W&S issue |
| Recreation | Timing | Within ¼ mile of Burning Coal Vein campground from May 15 through December 1 |
| Cultural | NSO | Protect traditional use areas |
| Paleontology | CSU | Protect paleontological resources in the Marmarth area |
| Steep slopes | NSO | Prohibit activities on slopes > 40% and/or on mass failure hazard areas |
| Lands | Lease Notice | NFS Lands under USDA Jurisdiction |
| Cultural | Lease Notice | Protect archeological sites |
| Paleontology | Lease Notice | Protect paleontological resources |
| Floodplains | Lease Notice | Minimize disturbance to riparian areas, including the aquatic and riparian ecosystems |
| T,E & S | Lease Notice | Protection of Threatened, Endangered and Sensitive species |

**Southern Little Missouri Project Area**

**1. Inventoried Roadless Areas**

The three inventoried roadless areas (Bullion Butte, Kinley Plateau, and Strom-Hanson) will be leased with area wide NSO stipulations. These areas are identified on Map III-5 in the FEIS. It is my intention to maintain the roadless character of these areas where it exists. In addition, surface occupancy will not be allowed to prevent drainage of Federal minerals as previously allowed in the Forest Plan.

By this decision, I will be maintaining my option to allocate some or all of these areas to a low development management emphasis that may result from the Forest Plan revision process.

**2. Research Natural Areas (RNAs)/Special Interest Areas (SIAs)**

The Limber Pine RNA and all Candidate SIAs will be leased NSO. The Nominated Geologic SIAs will be leased Controlled Surface Use (CSU) in order to avoid the known geologic outcrops, and a pre-development survey will be conducted prior to surface disturbance to specifically identify any outcrops for which the SIAs were nominated. Any potential impacts associated with newly discovered significant geologic outcrops can be protected as provided under Standard Lease Terms (SLT).

For Limber Pine, Black Butte and Pretty Butte, no surface occupancy or use will be allowed on Fee, State or Federal surface within the mapped resources for these areas in order to access the Federal mineral estate.

**3. Biodiversity**

- **T & E Species:**

Prairie dog towns, including those currently being studied by the US Fish and Wildlife Service for black footed ferret (threatened and endangered species) re-introduction sites, will have an NSO stipulation for the town and the area within 100 feet of the town.

- **Sensitive Animals:**

**Ferruginous Hawk** - New leases within ½ mile of nest sites will be issued with an NSO stipulation within this ½ mile, and a Timing Limitation (TL) within 1 mile of nest sites for the period from March 1 through August 1.

**Bighorn Sheep** - All new leases in bighorn sheep habitat will be issued with an NSO stipulation. Future roads to wells that prove to be dry on private minerals under NFS lands will be obliterated and the disturbed areas reclaimed following their use. Access to the existing pipeline across Moody Plateau for maintenance and for the installation of new pipelines within the existing corridor would be allowed. This includs where the pipeline corridor crosses the "core" area. Granting a waiver, exception, or modification (WEM) for this area will be unlikely until after the Moody Plateau Sheep Study results have been adequately analyzed (report due in August, 1996). At that time, the authorized officer may grant WEMs based on the results of the analysis of the pending sheep study.

**Sage Grouse** - All new leases will be issued with an NSO stipulation for the area within ¼ mile of known grouse leks. A TL stipulation would be applied to areas within 2 miles from March 1 to June 15.

- **Sensitive Plants:**

On **NFS Lands** all new leases will be issued with a CSU stipulation for known sites. For NFS lands with no known sites there is no sensitive plant stipulation for oil and gas activities, however, National Forest Policy requires biological evaluations (BEs) to be conducted prior to approval of surface disturbing activities, and this includes predevelopment surveys for sensitive plants. If a biological evaluation determines that there are no sensitive plants on the lands proposed for disturbance at the Application for Permit to Drill (APD) stage, occupancy within suspected sensitive plant habitat areas will be allowed.

## TABLE R-2

### Southern Little Missouri and Cedar River Oil and Gas Leasing Decision
### Availability Alternative D-3 - Leasing Alternative E-7 [1]

| | AVAILABILITY | | | LEASING STIPULATIONS | | | | |
|---|---|---|---|---|---|---|---|---|
| | | NOT AVAIL | AVAIL-ABLE | NO LEASE | NSO | TL | CSU | SLT |
| SLM PROJECT AREA | ACRES | ACRES | ACRES | ACRES | ACRES | ACRES | ACRES | ACRES |
| **Inventoried Roadless Area (Issue 1)** | ----- | ----- | ----- | ----- | ----- | ----- | ----- | ----- |
| Bullion Butte | 11,460 | | 11,460 | | 11,460 | 0 | 0 | 0 |
| Kinley Plateau | 11,850 | | 11,850 | | 11,850 | 0 | 0 | 0 |
| Strom-Hanson | 15,080 | | 15,080 | | 15,080 | 0 | 0 | 0 |
| **Research Natural Areas (Issue 2)** | ----- | ----- | ----- | ----- | ----- | ----- | ----- | ----- |
| Limber Pine RNA | 680 | | 680 | | 680 | 0 | 0 | 0 |
| Black Cottonwood SIA | 120 | | 120 | | 120 | 0 | 0 | 0 |
| Bullion Butte Escrp SIA | 1,890 | | 1,890 | | 1,890 | 0 | 0 | 0 |
| Burning Coal Vein SIA | 220 | | 220 | | 220 | 0 | 0 | 0 |
| Pretty Butte SIA | 360 | | 360 | | 360 | 0 | 0 | 0 |
| Black Butte SIA | 800 | | 800 | | 800 | 0 | 0 | 0 |
| Round Top Butte SIA | 60 | | 60 | | 60 | 0 | 0 | 0 |
| Bullion Creek TS Nom SIA | 550 | | 550 | | 0 | 0 | 550 | 0 |
| Slope TS Nom SIA | 190 | | 190 | | 0 | 0 | 190 | 0 |
| Cannonball/Slope Nom SIA | 60 | | 60 | | 0 | 0 | 60 | 0 |
| **Biodiversity (Issue 3)** | ----- | ----- | ----- | ----- | ----- | ----- | ----- | ----- |
| Prairie Dogs | 1,230 | | 1,230 | | 1,230 | 0 | 0 | 0 |
| Ferruginous Hawk | 10,230 | | 10,230 | | 2,670 | 7,560 | 0 | 0 |
| Bighorn Sheep Habitat | 24,650 | | 24,650 | | 24,650 | 0 | 0 | 0 |
| Sage Grouse | 58,540 | | 58,540 | | 1,290 | 57,250 | 0 | 0 |
| Sensitive Plants | 1,570 | | 1,570 | | 0 | 0 | 1,570 | 0 |
| Sharptail Grouse | 53,300 | | 53,300 | | 4,660 | 48,640 | 0 | 0 |
| Golden Eagle | 14,010 | | 14,010 | | 14,010 | 0 | 0 | 0 |
| Prairie Falcon | 7,710 | | 7,710 | | 7,710 | 0 | 0 | 0 |
| Antelope Winter Range | 27,650 | | 27,650 | | 11,620 | 16,030 | 0 | 0 |
| Mule Deer Habitat | 57,620 | | 57,620 | | 0 | 0 | 57,620 | 0 |
| Ponderosa Pine Stands | 2,750 | | 2,750 | | 2,750 | 0 | 0 | 0 |

| | AVAILABILITY | | | LEASING STIPULATIONS | | | | |
|---|---|---|---|---|---|---|---|---|
| | | NOT AVAIL | AVAIL-ABLE | NO LEASE | NSO | TL | CSU | SLT |
| **SLM PROJECT AREA** | **ACRES** | **ACRES** | **ACRES** | **ACRES** | **ACRES** | **ACRES** | **ACRES** | **ACRES** |
| **Biodiversity (Issue 3)** | ----- | ----- | ----- | ----- | ----- | ----- | ----- | ----- |
| Riparian Areas | 2,790 | | 2,790 | | 0 | 0 | 2,790 | 0 |
| Woody Draws | 3,200 | | 3,200 | | 3,200 | 0 | 0 | 0 |
| **Moody Plateau Bighorn Sheep Study (Issue 4)** | ----- | ----- | ----- | ----- | ----- | ----- | ----- | ----- |
| Sheep Habitat | 24,650 | | 24,650 | | 24,650 | 0 | 0 | 0 |
| **Visuals/Recreation (Issue 5)** | ----- | ----- | ----- | ----- | ----- | ----- | ----- | ----- |
| Ltl Missouri River Foreground | 13,640 | | 13,640 | | 13,640 | 0 | 0 | 0 |
| Ltl Missouri River Mid/Background | 5,160 | | 5,160 | | 0 | 5,160 | 0 | 0 |
| Burning Coal Vein Campground | 650 | | 650 | | 230 | 210 | 210 | 0 |
| Burning Coal Vein Viewshed | 190 | | 190 | | 0 | 0 | 190 | 0 |
| NF Access Routes | 51,760 | | 51,760 | | 0 | 0 | 51,760 | 0 |
| Ponderosa Pine Viewshed | 4,260 | | 4,260 | | 4,260 | 0 | 0 | 0 |
| Little Missouri River ¼ Mile Corridor | 13,340 | | 13,340 | | 13,340 | 0 | 0 | 0 |
| **Additional Issues** | ----- | ----- | ----- | ----- | ----- | ----- | ----- | ----- |
| Heritage Resources | 5,150 | | 5,150 | | 5,150 | 0 | 0 | 0 |
| Paleontological Resources | 46,620 | | 46,620 | | 0 | 0 | 46,620 | 0 |
| Steep Slopes | 1,230 | | 1,230 | | 1,230 | 0 | 0 | 0 |
| Al Schaeffer Land Exchange [2] | 681 | 681 | | | | 160 | | 521 |
| **CEDAR RIVER PROJECT AREA** | **ACRES** | **ACRES** | **ACRES** | **ACRES** | **ACRES** | **ACRES** | **ACRES** | **ACRES** |
| Management Area B | 5,965 | | 5,965 | | 0 | 0 | 0 | 5,965 |
| Management Area C [3] | 175 | | 175 | | 175 | 0 | 0 | 0 |

[1] Acres reported in this table are for Federal minerals only for the Selected Alternative for each issue/concern. Many of these resource areas overlap, therefore calculating total acres of NSO, TL, CSU or SLT from the resources listed on this table would be misleading. The total acres of NSO, TL, CSU and SLT are shown under the Oil and Gas Occurrence Potential headings on Table R-2.

[2] Al Shaeffer proposed land exchange temporarily not available. Upon becoming available, would be leased as indicated.

[3] Cedar River Management Area C contains sensitive plants and riparian areas. The remainder of the Federal mineral acres in Cedar River Management Area B contained no resources of concern that could not be adequately mitigated with SLT.

- **Watch Plants:**

On **NFS Lands** all new leases will be issued with a CSU stipulation for known sites. Pre-development surveys will be done in conjunction with those for the sensitive plants biological evaluation, but will not be required specifically for watch plant species. Occupancy within habitat areas will be allowed if the pre-development survey finds no watch plants.

- **Management Indicator Species (MIS):**

**Sharp-tail Grouse** - All new leases will be issued with an NSO stipulation for the area within ¼ mile of known grouse leks. A TL stipulation would be applied to areas within 1 mile from March 1 to June 15.

- **Key Species:**

**Golden Eagle and Prairie Falcon** - All new leases will be issued with an NSO stipulation for the area within ½ mile radius around nest sites.

**Antelope Winter Range** - All new leases will be issued with an NSO stipulation covering specific isolated clay buttes identified in the FEIS, and TL on the rest of the winter range from December 31 to April 1.

- **Mule Deer Habitat (Canyonlands):**

All new leases will be issued with a CSU stipulation. Drill pads and access roads will be located in order to minimize disturbance to areas known for their high value to mule deer, such as areas of valuable vegetative diversity and seclusion.

- **Unique Occurrences:**

**Ponderosa Pine Stands** - All new leases will be issued with an NSO stipulation within these mapped stands. Access and other associated development and production facilities will be routed to avoid cutting dominant and co-dominant trees. (There are additional visual concerns for this area, see below.)

**Riparian Areas** - All new leases will be issued with a CSU stipulation. Drill pads will not be located within the aquatic ecosystem, and will be located to avoid disturbance to the distinctive vegetative communities within the riparian ecosystems. Access and other associated development and production facilities will be routed to cross riparian areas at right angles to minimize road length, to maintain stream gradients, and to prevent sedimentation in the streams.

**Woody Draws** - All new leases will be issued with an NSO stipulation. Access and other associated development and production facilities will be routed to cross woody draws at right angles to minimize road length and number of crossings.

**4. Moody Plateau Sheep Study**

The issue related to the Sheep Study has been expanded since the start of this environmental analysis. Initially, this issue was to address the concern of preserving the integrety of this sheep study. Since then, it has been redefined to include our ability to consider recommendations coming out of the study, analyze and make a decision as to what protection requirements would be appropriate, and then be able to implement them. As mentioned above under bighorn sheep, all new leases in bighorn sheep habitat will be issued with an NSO stipulation with WEMs unlikely until the results of the study have been adequately analyzed. Leasing sheep habitat in this manner provides the flexibility described above, so no further decision is needed to address this issue. Please refer to the discussion on bighorn sheep above for the details of the decision.

**5. Visuals/Recreation**

- **Visuals**

The Visual Quality Objectives (VQO) described below **will be met**. Guidance for meeting the VQOs is described in Appendix D, Table D-2 of the FEIS. However, at the APD stage the Responsible Official will have final approval over what actions will be taken to **assure** that these VQOs are met.

NSO will be applied to areas where the VQO of Retention cannot be met within the foreground of the Little Missouri River and the ponderosa pine stands by any other means.

CSU as described in Table D-2 will be applied in order to meet the VQO of Retention or Partial Retention in the following areas:

Retention within the middleground and background of the Little Missouri River;

Partial Retention within the foreground of the Burning Coal Vein Campground;

Partial Retention within the foreground and middleground of the primary NFS access routes, including the Wildlife Viewing Route;

New leases within ¼ mile of the Little Missouri River will be issued with an NSO stipulation. No surface occupancy or use will be allowed within this ¼ mile corridor on Fee, State, or Federal surface in order to access Federal minerals. Leases let after the completion of the Wild and Scenic suitability study will reflect the findings of that study. This ¼ mile corridor is not always the same area as the foreground viewshed of the river.

- **Recreation**

New leases for the lands within the Burning Coal Vein Campground boundary (Management Area F) will be issued with an NSO stipulation. New leases within ¼ mile of the Burning Coal Vein Campground will contain a TL to prohibit oil and gas development activities from May 15 to December 1.

**6. Heritage Resources**

- **Traditional Cultural Properties**

All new leases will be issued with an NSO stipulation for known sites.

- **Archaeological Resources**

These sites will be protected by law, as described in the Cultural Lease Notice, and a pre-development survey will be required. Occupancy may be allowed if the survey does not indicate the presence of archaeological resources.

**7. Paleontological Resources**

All new leases in the Marmarth area will be issued with a CSU stipulation and a pre-development survey requirement . Occupancy may be allowed if the survey does not indicate the presence of paleontological resources.

**8. Steep Slopes**

New leases will be issued with an NSO stipulation for slopes in excess of 40 percent. Access roads could be allowed for distances of ¼ mile or less where this will minimize the total impacts to the proposed disturbance area.

**9. Amidon Administrative Site**

This site will be leased with an NSO stipulation.

**Cedar River Project Area**

- **Sensitive Plants**

A CSU stipulation requiring predevelopment surveys for sensitive plants for all 6,140 acres of Federal minerals in this area.

- **Management Area C**

The two C Management Areas in this area and the contained riparian areas will be covered by NSO. Although my decision allows occupancy and access in riparian areas in the Southern Little Missouri portion of the project area in certain circumstances, access through this area is not allowed under Forest Plan Management Standards. The Cedar River Management Area Cs are small (175 acres) and contain the few riparian areas and sensitive plants found in that project area on National Forest System land. No surface occupancy, along with no access through these areas under the Forest Plan Management Standards, will provide the needed protection for these resources.

- Any areas not specifically covered by any of the above requirements will be leased with SLT.

**C. RATIONALE FOR THE AVAILABILITY AND LEASING DECISIONS**

The primary factors that I took into consideration when making my decisions were the Purpose and Need (why I am proposing to do this in the first place) and the issues (the things that are of concern when addressing this proposal). Since the issues resulted in large part from input from the public and other agencies, I looked closely at the responses that I received from them on the Draft EIS. Also, I somehow had to factor in how much risk that I was willing to take with the resources at stake. I had to come up with the least restrictive stipulations that would still provide the needed resource protection. The primary source of information is the environmental analysis, documented in the FEIS. The primary tool for addressing cumulative effects was the Oil and Gas Activity Scenario, which includes the Reasonably Foreseeable Development Scenario (RFD). When reviewing the FEIS, I did not see a lot of differences for some of the issues based on the RFD. This is where I had to factor in how much risk I was willing to take when stipulating for each resource. Below is the rationale for my decision in relation to each of these points.

**1. Response to Purpose and Need**

- **To ensure that oil and gas leasing analysis and decision making are conducted according to regulations for the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (36 CFR 228E).**

I have reviewed the regulations at 36 CFR 228 Subpart E. I have compared the analysis against the requirements in 36 CFR 228.102 through 36 CFR 228.104 which specifically address leasing. I believe that the leasing analysis and documentation contained in the FEIS meet the requirements of Section

228.102(c), and that the availability and specific leasing decisions that I have made meet the requirements of Sections 228.102(d) and 228.102(e) respectively.

- **To implement Congressional direction for oil and gas leasing (Mineral Leasing Act of 1920, Mineral Leasing Act for Acquired Lands of 1947, Mining and Minerals Policy Act of 1970).**

One of the missions of the Forest Service is to support, facilitate, and administer the orderly exploration, development, and production of mineral and energy resources on NFS lands while protecting other resource values. Integral in this mission is consideration of the economic well being of local communities and the strategic interests of the Nation. I believe that by making all of the lands within this project area administratively available for leasing, I have taken these economic and strategic interests into consideration. By applying stipulations that I have identified in this decision for specific lands I have given the appropriate consideration to the other resource values.

- **To ensure orderly development and conservation of the oil and gas resource (1990 Resource Planning Act, and Forest Service Policy at FSM 2800).**

In the 1990 RPA program, the long-term strategy for minerals is to meet most demands for access to explore and develop mineral resources, except when doing so would pose unacceptable high risks to other resources. I have reviewed the effects of leasing with the various stipulations, and have determined that it is possible to adequately protect the surface resources while still making the area available for oil and gas leasing. However, I felt that it was necessary to apply specific stipulations to adequately protect some of these surface resources when leasing in these areas is done. This major theme, availability with appropriate protection for surface resources, is the essence of my decisions.

- **To implement Forest Plan goals, objectives, standards, and management direction for oil and gas leasing.**

The Forest Plan did make decisions on availability and what various stipulations may be attached to leases for surface resource protection. However, since the Forest Plan predates the implementing regulations of FOOGLRA, these decisions had to be revisited to ensure that they could be supported by analysis and documentation that conformed to the current regulations. When making the decisions in this document, I looked to see how I was meeting the direction of the Forest Plan in relation to this activity, and moving towards its vision of desired future condition. I found that what this analysis was showing was very similar to what was developed in the Forest Plan. The actual differences from the Forest Plan are not significant and are highlighted below in Section D. These changes are the result of new information of a technical nature (i.e. latest information on specific wildlife species), and new information about the public's desires (i.e. how to manage areas that are essentially devoid of roads). By making these changes (amendments) to the Forest Plan, I believe that our Forest Plan is functioning as intended, that is, it is adaptive and responsive to new information.

- **To respond to interest and activity by the energy industry in oil and gas exploration and development in and adjacent to the southern portion of the Little Missouri National Grassland and the Cedar River National Grassland.**

The oil and gas industry has demonstrated their interest in this project area through their request for leases and by moving forward with exploration and development on existing Federal leases and on private mineral estates. Following the issuance of the implementing regulation for FOOGLRA, a schedule was developed to address area or Forest-wide leasing decisions. Three areas administered by the Custer National Forest were given high priority for completion of leasing analyses. The first two have been completed, the Northern Little Missouri in 1991 and the Beartooth Mountains in 1993. This is the remaining scheduled high priority study area for the Custer.

This decision makes all of the land in this project area available for leasing by the energy industry while identifying what I believe to be reasonable surface resource protection requirements. Table R-3 displays the leasing decisions by oil and gas occurrence potential.

**2. Response to Other Agency Comments**

I have received and reviewed comments on the Draft EIS from several State and Federal agencies, and elected officials. These letters are reproduced in Chapter V of the FEIS.

There were many thoughtful questions and comments received from the responding agencies and elected officials. Some of these questions resulted in adding more information to was in the DEIS, while some required clarification of information that was in the Draft EIS. In addition to these, there were some comments that required correction of textual errors. These additions and corrections have been made in the FEIS. There were other comments that had a more direct bearing on my deliberations in reaching a decision. These are discussed below. The full text of the agencies comments and our responses to them is in Chapter V.

The US Fish and Wildlife Service had some concerns about certain wildlife species, specifically ferruginous hawk, golden eagle, and prairie falcons. Additional information on these species has been added to the FEIS. They also had concerns about the stipulations for bighorn sheep. They felt that protection or improvement to the resource base could only be achieved through a reduction or elimination of additional leasing. In the FEIS another alternative was developed that made exploration and development in bighorn sheep habitat more restrictive than the preferred alternative in the DEIS. Since I am choosing this alternative as my leasing decision, I believe that I have addressed their concern.

Theodore Roosevelt National Park had numerous concerns related to air and water quality. Additional information was added in the FEIS related to these concerns. I believe that my decision takes all of this information into consideration. The Park also raised concerns relating to the viewsheds adjacent to the South Unit of the Park and along the Little Missouri River. It appears that there is agreement with the level of protection needed (i.e. the visual quality objective), but not necessarily with the means of achieving it. I believe that the guidance provided in Table D-2 in the FEIS will enable us to achieve the visual objectives in these sensitive areas.

The Environmental Protection Agency (EPA) also had comments on air and water quality. With the additional information included in the FEIS, I believe that I have addressed their concerns, and that my decision has taken them into consideration.

The Army Corps of Engineers had concerns about activities that are regulated by Section 404 of the Clean Water Act. The Corps of Engineers, as well as the EPA, will be consulted on such activities at the APD stage of development.

## TABLE R-3

### Southern Little Missouri and Cedar River Oil and Gas Leasing Decision
### Availability Alternative D-3 - Leasing Alternative E-7 [1]
### Stipulations by Oil and Gas Occurrence Potential

| | AVAILABILITY | | | LEASING STIPULATIONS | | | | |
|---|---|---|---|---|---|---|---|---|
| | | NOT AVAIL | AVAIL-ABLE | NO LEASE | NSO | TL | CSU | SLT |
| **SLM PROJECT AREA** | **ACRES** | **ACRES** | **ACRES** | **ACRES** | **ACRES** | **ACRES** | **ACRES** | **ACRES** |
| **Oil and Gas Occurrence Potential** | ----- | ----- | ----- | ----- | ----- | ----- | ----- | ----- |
| High | 47,920 | | 47,920 | | 28,070 | 10,380 | 5,890 | 3,580 |
| Moderate | 163,500 | | 163,500 | | 49,640 | 62,440 | 24,720 | 26,700 |
| Low | 44,280 | 680 [1] | 43,600 | | 3,520 | 9,480 | 6,440 | 24,840 |
| **Total** | 255,700 | 680 | 255,020 | | 81,230 | 82,300 | 37,050 | 55,120 |
| **CEDAR RIVER PROJECT AREA** | | | | | | | | |
| **Oil and Gas Occurrence Potential** | ----- | ----- | ----- | ----- | ----- | ----- | ----- | ----- |
| High | 0 | | 0 | | 0 | 0 | 0 | 0 |
| Moderate | 1,040 | | 1,040 | | 160 | 0 | 0 | 880 |
| Low | 4,560 | | 4,560 | | 15 | 0 | 0 | 4,545 |
| **Total** | 5,600 | | 5,600 | | 175 | 0 | 0 | 5,425 |

[1] Al Schaeffer land exchange

US Senator Byron Dorgan, North Dakota, stated that leasing in the vicinity of Bullion Butte, Tracy Mountain, Moody Plateau, and Kinley Plateau should be delayed until an agreement is reached with private mineral interest on the exchange of minerals within these areas. Since the exchange has not progressed to the point of identifying the specific lands involved in the proposal, I do not believe that delaying a decision to lease in these areas at this time would be productive. Excluding large tracts of land from this leasing decision would leave the agency with the task of reanalyzing leasing on those lands that did not get included in the exchange. However, I do believe that it would be productive to proceed with the leasing decision for the entire area based on this analysis, but to withhold implementation of the decision within Township 137 North, Range 101 West, Township 137 North, Range 102 West and Township 138 North, Range 102 West as these areas contain the lands most likely to be included in the exchange. I plan to delay implementation for one year on these lands, and then reassess the situation relative to the exchange. In this way, I will be able to address Senator Dorgan's concerns, and still have a leasing decision that can be implemented on the lands that are left out of the exchange. Senator Dorgan also had concerns for the specific level of protection for these same areas, as well as for the Ponderosa Pine Area and Burning Coal Vein. All of these areas, except for parts of Tracy Mountain and the Ponderosa Pine Area, are protected with NSO stipulations. I believe that I have addressed Senator Dorgan's concerns about retaining the present condition of these areas for future generations.

Edward Schafer, Governor of North Dakota, also raised the question of a mineral exchange. I believe I have addressed it above. He also stated that additional leasing should not be done in certain management areas (namely Management Areas C and D), because it would be doubtful that the surface management objectives could be met if this area were leased. I considered these options in the different alternatives. However, when reviewing the results of the analysis, I felt that the resources could be adequately protected by leasing with an NSO stipulation. Governor Schafer also stated that leasing could be done in these areas at a later date when more complete base line data is available. I believe that I have adequate data, as documented in the FEIS, to make this decision at this time. Another item raised by Governor Schafer is in relation to canyonland complexes. I recognize that this is a very sensitive and controversial issue. My interdisciplinary team has been working closely with the North Dakota Game and Fish Department on the delineation of this resource and reasonable methods of protection, while accommodating the limited projections of oil and gas development in them. I am pleased with the interaction of my team and the Game and Fish Department, and feel that they have provided me with adequate information to make a reasoned decision concerning this resource.

James R. Arthaud, Mayor of Medora, had some concerns about the effects of lost royalties on the road system and public school system. The FEIS has displayed the economic effects of implementing the various alternatives. I took this into consideration when making my decisions.

### 3. Response to Public Comments

Eighty-five letters were received on the draft, with a total of 578 comments. A lot of these comments were the equivalent of "voting." A number of the comments offered corrections, which have been incorporated into the FEIS. Others provided me with food for thought as I was making my decision. I refer to them in the discussion below. The full text of the comments and the Forest Service responses to them is included in Chapter V of the FEIS.

- **Issue 1 - Inventoried Roadless Areas**

I heard a lot of strong feelings about these areas, both during the initial public comment period and during the review of the draft EIS. These feelings tend to reflect the two extremes. I heard people telling me that undeveloped areas within the badlands are becoming more scarce, and that they have a high interest in retaining what is left there. This is also where a lot of resource concerns seem to come together: fossils, biodiversity, recreation and visual concerns, heritage, and botanical special interest areas. This is some of the best of what is left on public land in North Dakota. People are interested in preserving and promoting low development areas for recreational values for North Dakotans. This is a much more significant issue than it was during the development of the Forest Plan. I also understand how these lands are important from an oil and gas resource standpoint, since they hold some of the highest oil and gas potential in the project area. What to do with these areas represented one of my toughest decisions on this project.

By choosing to lease with NSO stipulations, I have given industry a chance to explore and develop while being sensitive to the surface resources. I recognize that by leasing large blocks of land with an NSO stipulation, I may be making some of these areas inaccessible under current technology. However, I feel that this is more acceptable than not leasing the areas at all, since technology may be developed during the life of this leasing decision that will enable these areas to be accessed. Keeping the level of development in these areas low retains my options of being able to allocate these lands to low development emphasis through the Forest Plan revision process that is underway in this area. I recognize that some development will occur in this area, because of preexisting leases and private mineral rights. Where this development results in the construction of roads on National Forest System surface, I will require that these roads be obliterated and reclaimed when their use is done. This will help hold down the level of development in these areas.

I also received a number of comments about wanting the Forest Service to attempt to consolidate mineral ownership in these areas of critical resources, and that we should not be leasing potential "trading stock" until all options to do this have been explored. The idea of an exchange to consolidate the Federal mineral estate is outside the scope of this analysis and decision. However, as I have indicated above in a response to Senator Dorgan's request, I will be delaying implementing my decision for one year in the portion of the area where there has been an expressed interest in an exchange by the private mineral estate owner.

My decision represents a slight change from the preferred alternative in the DEIS, where development was allowed along preexisting roads. I've made this change largely because of comments received on the DEIS. I want to make it clear that this is not a decision to manage these areas as roadless. It is a decision to allow leasing with an NSO stipulation to preserve the roadless character of the area. The Forest Plan revision that will result from the Northern Great Plains planning effort will determine the future management of these areas.

- **Issue 2 - Research Natural Areas**

Under this decision, Limber Pine RNA and the candidate SIAs will be leased with NSO stipulations. For Limber Pines, Pretty Butte, and Black Butte, the NSO stipulation will identify the entire resource area, even where it occurs on private land. Occupancy within these mapped resource areas on Fee, State, or Federal surface will not be allowed in order to access the Federal mineral estate. This represents a change from the preferred alternative identified in the draft EIS, where these three areas would not have been made available for leasing. Some comments questioned why these areas needed to be protected. I feel that these resources are unique, and I do not want to risk damaging them. However, I do feel that it is important to allow industry the opportunity to explore them. For that reason, I have decided to make them available for leasing with this stipulation. Most of these areas are small enough that the entire area can be accessed by directional drilling from outside of the identified RNA and SIAs.

- **Issue 3 - Biodiversity**

Biodiversity is a difficult and complex issue to address, and our knowledge of how to address it is rapidly evolving. The grasslands are home to a tremendous diversity of landforms and species. In some cases it is possible to address the needs of certain key species where they occur, while in other cases it is more realistic to address their habitat and attempt to retain its composition, structure and function.

As was expected, this was the area where the most comments were received. A lot of the comments had to do with the adequacy or interpretation of the data. A lot of improvement has been made in the FEIS as a result of these comments. As a result of this updated information, I did see enough differences in the resultant effects to cause me to alter my decision from the preferred alternative in the DEIS.

A lot of comments questioned the level of protection being given to the resources considered under this issue. In most cases the commentor felt that the level of protection was too high. In a couple cases, namely in Tracy Mountain and the Ponderosa Pine Area, the level of protection was felt to be too low. I reexamined the various levels of protection given these resources under the different alternatives and the results of the updated analysis portrayed in the FEIS. A simple answer does not just jump out at you when looking at the RFD. I came away with essentially the same answer. I feel that it is important to provide the level of protection to these surface resources as was shown in the preferred alternative in the Draft EIS, with the modifications that I explained in

my decision: namely in the handling of bighorn sheep habitat, antelope winter range around certain isolated clay buttes, and ponderosa pine stands.

- **Issue 4 - Moody Plateau Sheep Study**

Initially, this issue was to address the concern of preserving the integrety of this sheep study. Since the DEIS was released, it has been expanded to include our ability to consider recommendations coming out of the study, analyze and make a decision as to what protection requirements would be appropriate, and then be able to implement them. The field work for the Moody Plateau Bighorn Sheep study has been completed. Therefore, my decision will not compromise the field work. Since I have already made the decision to lease the habitat with an NSO stipulation, the most restrictive, I feel that my decision maintains our flexibility to consider the recommendations of the study when it has been released. If it is determined that lesser stipulations are needed in certain areas to adequately protect the bighorn sheep, then these results may be incorporated into an analysis that considers a WEM for already leased land at the APD stage, or a revised leasing decision for lands not yet leased.

- **Issue 5 - Visuals/Recreation**

A number of commentors raised the question about a "withdrawal" from leasing along the Little Missouri River. Although this was never proposed, I was considering making the corridor available but not leasing it until the Wild and Scenic river suitability study was done. After much consideration, I have decided to lease the river with an NSO stipulation, which I feel will adequately protect its outstandingly remarkable characteristics pending the outcome of the study. I feel that this decision conforms with Forest Service interim direction for study rivers.

The question was also raised about controlling private land within this corridor. The Forest Service does not have any control over private activities on private land. However, the NSO stipulation within this ¼ mile corridor means that no occupancy will be allowed on Fee, State, or Federal surface within this ¼ mile corridor in order to access the Federal mineral estate. This will ensure that there will be no oil and gas related activity disturbance on private land within the ¼ mile river corridor in order to access Federal minerals.

There were some comments about the stipulations for visuals being too restrictive. After reviewing the proposed stipulations for visuals, I see that they state the visual objective that is to be met. In looking at the guidance given in Table D-2 in the appendix of the FEIS, I see that there is a lot of latitude on how to meet the visual objective based on the site specific situation, except where NSO is needed to meet a foreground retention objective. Therefore, I do not believe that my decision in relation to visuals is too restrictive.

- **Issue 6 - Economic Stability of the Communities**

Several comments were received that addressed the economic impacts of not leasing, or leasing with very restrictive stipulations. I realize that the communities in this part of North Dakota rely to some extent on the income from oil and gas activities. I certainly took this into consideration by making all lands available for leasing.

I also received comments that spoke about what the "other resources" provide to local communities and the area. There was discussion about the beauty of the Badlands, the Little Missouri River, and roadless values and the return to the local communities from these. I believe that my decision provides a reasonable level of protection for these values.

Some commentors talked about the loss of revenue from drainage of Federal minerals. I realize that some drainage may occur by the way I have structured my decision. It is difficult to really know how much because of the difficulty of forecasting development. The best measure that we have at the moment is the RFD, which has been factored into the table of economic effects in the FEIS. I attempted to balance all resources and their effects on the economic stability of the communities in the area and region when I was making my decision.

- **Additional Issues**

Only two comments were received on heritage, paleontology, and steep slopes. I believe that my decision adequately protects all three of these areas.

Some comments were received on air and water quality. I believe that these have been adequately addressed in the FEIS.

- **Cedar River Project Area**

I did not receive any comments that specifically addressed the Cedar River project area. That, in itself, tells me something. So I relied primarily on the results of the analysis as portrayed in the FEIS in making my decision. My rationale is summarized below.

The resources of concern (sensitive plants and riparian areas) seem to be located within the two C Management Areas. I feel that the best way to protect them is with an NSO stipulation. Additionally, because of their configuration road development through these areas would not be allowed under the standards and guides in the Custer Forest Plan. The larger of these two areas is an isolated tract, and there is no need to cross it to access Federal minerals. The other area is very small (15 acres), and can be easily avoided to access the areas around it.

There are woody vegetation stands (willows and cottonwoods) found outside of these C Management Areas. However, none were found on National Forest System lands to be of sufficient size (500 feet in length) to qualify for Management Area N (Woody Draws) designation and an NSO stipulation. Therefore, I believe that when constructing roads and drill pads, these small tree stands will be avoided through the use of SLT.

Even though the only known locations of sensitive plants are within the C Management Areas, I will be requiring predevelopment surveys for their occurrence over the entire Federal mineral ownership in this area.

## D. FOREST PLAN AMENDMENTS

Based on information disclosed in the FEIS and the leasing decisions that I am making, I am also making some nonsignificant amendments to the Forest Plan. The actual amendments are included in the Appendix of this document. The following is a summary of what is included in these amendments:

- **Specific Changes in Application of Stipulations (Forest Plan Amendment Number 29):**

  The three Inventoried Roadless Areas within the Southern Little Missouri project area will be leased with NSO in order to maintain their roadless character. Access will not be allowed in order to prevent drainage of Federal minerals as is presently allowed by the Forest Plan in the Bullion Butte and Kinley Plateau Roadless Areas within Management Area D.

  Mapped ponderosa pine stands will be leased with NSO. Access and other associated development in these stands will be routed to avoid cutting dominant and codominant trees. Visual foreground of these stands will be managed to retain the visual quality.

  The period of restricted activity around Burning Coal Vein Campground will be extended to December 15 annually.

  Activities allowed within riparian areas is more clearly defined.

  Nominated Geologic SIAs will require pre-development surveys in order to identify and protect the outcrops for which they were nominated.

  Paleontological resources in the Marmarth area will be protected by a CSU stipulation. A predevelopment survey will also be required.

- **Specific Protection Requirements for Certain Species (Forest Plan Amendment Number 30):**

  All of the bighorn sheep habitat within the Southern Little Missouri project area will be leased with NSO.

  Antelope winter range within the Southern Little Missouri project area will be leased with TL from December 31 through April 1 annually. Isolated clay buttes within this range (identified in the FEIS) will be leased with NSO.

  The area to be leased NSO around golden eagle and prairie falcon nests will be increased to ½ mile radius.

  Ferruginous Hawk nest sites will be protected by NSO for ½ mile and TL for one mile from March 1 through August 1 annually.

  The seasonal restriction around sage and sharptail grouse leks will be increased from ¼ mile out to two miles and one mile respectively.

  Definitions for active lek and active nest have been added to the glossary.

- **Addition of a Candidate SIA (Forest Plan Amendment Number 31):**

  Round Top Butte is added to the list of Candidate Special Interest Areas.

These amendments do not alter any of the long-term relationships between the levels of goods and services projected by the Fores Plan. Therefore, these amendments are non-significant under the National Forest Management Act [36 CFR 219.10(f)] and Forest Service Manual 1922.51.

## III. BUREAU OF LAND MANAGEMENT (BLM) DECISIONS

Based on the joint analysis conducted by the Forest Service and BLM, and documented in the FEIS, the BLM hereby makes the following findings and decisions:

### A. LEASING NFS MINERALS

As required by regulation at 43 CFR 3101.7-1(c) the BLM will only offer and issue leases on the lands that are included in the Forest Supervisor's decision to authorize specific lands for leasing. No lease parcels will be offered over the objections of the Forest Service.

The BLM will offer lands for lease and issue leases for lands within the southern third of the Little Missouri National Grassland and Cedar River National Grassland subject to stipulations required by the Forest Supervisor, in accordance with the regulation at 43 CFR 3101.7-2(a).

### B. RATIONALE FOR LEASING NFS MINERALS

The regulation at 43 CFR 3101.7-1(c) which pertains to leasing of National Forest System lands administered by the Forest Service, requires BLM to obtain prior consent to leasing such lands. In the present case, such consent involves decisions being made by the Forest Supervisor with respect to authorization of specific lands for leasing and stipulations and conditions of approval needed to mitigate damage to surface and subsurface resources within the boundaries of a project area that encompasses the southern portion of the Little Missouri National Grassland and the Cedar River National Grassland, both located in North Dakota.

The BLM has participated as a joint lead agency in the analysis and documentation leading to the Forest Service decisions and recommendations. As a joint lead agency, the BLM has shared responsibility for compliance with the National Environmental Policy Act (NEPA), Council on Environmental Quality regulations and related requirements including public involvement and consultation with other agencies and organizations.

The BLM participation as a joint lead agency has included the use of BLM staff in conducting interdisciplinary analysis and preparing needed documentation. The BLM staff and managers have also reviewed work accomplished by the Forest Service, including proposed decisions, recommendations, and alternatives.

The FEIS meets the BLM Supplemental Program Guidance (SPG) requirements for fluid minerals including the development of Reasonably Foreseeable Development Scenarios for affected National Forest System lands, identification of mineral potential for oil and gas resources within the project area, and identification of stipulations which the BLM will utilize when leasing oil and gas minerals within the boundaries of the project area. It also reflects consideration of public, other agency, and interdisciplinary team input obtained during the analysis and decision making processes. Finally, it complies with applicable laws, regulations, and policies.

The Forest Service leasing decisions are based on analysis and documentation that meets legal and regulatory requirements of the BLM. Therefore, the BLM will use the FEIS as the NEPA compliance document for its leasing decisions within the administrative boundaries of the project area described above.

### C. LEASING SPLIT ESTATE MINERALS

The BLM will make all (approximately 24,770 acres) private surface/Federal mineral estates (split estate) within the administrative boundaries of the southern third of the Little Missouri National Grassland available for oil and gas leasing subject to the terms and conditions identified in the selected alternative for the FEIS as modified in this ROD.

### D. RATIONALE FOR LEASING SPLIT ESTATE MINERALS

As noted in the rationale for the BLM decision on Forest System lands, the agency has participated as a joint lead agency with the Forest Service in the analysis and documentation leading to the leasing decisions and recommendations found in the FEIS. Also as noted the FEIS meets the BLM SPG requirements for fluid minerals and reflects consideration of public, other agency, and interdisciplinary team input obtained during the analysis and decision making processes. Finally, it complies with applicable laws, regulations, and policies.

The BLM is mandated by the Federal Land Policy and Management Act (FLPMA) to coordinate; to the extent consistent with laws governing the administration of the public lands; land use inventory, planning, and management activities of or for such lands with the corresponding activities of other Federal entities such as the Forest Service within which the lands are located. In the case of this decision this mandate only relates to the management of the federally owned oil and gas estate.

For the relatively small proportion of the federal mineral estate in the project area under BLM jurisdiction, selection by the BLM of the mitigation measures described in Alternative E-7, as modified in this ROD, will help to ensure consistency in management of lands and resources within the administrative boundaries of the southern portion of the Little Missouri National Grassland.

## IV. PUBLIC INVOLVEMENT

In July, 1991 the Custer National Forest, in cooperation with the BLM, invited and accepted public comments on a projected study that was to encompass a large area of NFS lands in North and South Dakota and southeastern Montana, including the Sioux Ranger District, the Grand River Ranger District, and the Medora Ranger District. Due to shifting priorities, that study was delayed. However, the public comments collected during the scoping phase of the study were retained.

In November, 1992, the Custer National Forest, again in cooperation with the BLM, invited comments on the current smaller proposal to study potential leasing of portions of the Medora Ranger District and the Cedar River portion of the Grand River Ranger District. These study areas are located in southwestern North Dakota.

In all, 106 letters were received through both of these scoping efforts. The issues developed through scoping reflect respondents' concerns about the environmental and social impacts that may result from oil and gas development as a consequence of the leasing of Federal minerals within the project area.

Combining the public and other agency responses with internal Forest Service and BLM knowledge of the resources within the Project Area, the following issues were developed that would drive alternative development:

Inventoried Roadless Areas (IRAs)
Research Natural Areas (RNAs, Candidate and Nominated SIAs)
Biodiversity
Moody Plateau Bighorn Sheep Study
Visuals/Recreation
Economic Stability of Local Communities

Additional issues that were identified for tracking but would not drive alternative development were:

Heritage Resources
Paleontological Resources
Steep Slopes
Public Safety
Air Resources
Water Resources
Fire
Land Use
Livestock Grazing

In July, 1994 the Custer National Forest, in cooperation with BLM, invited and accepted public comments on the Southern Little Missouri and Cedar River Oil and Gas Leasing DEIS. The public comment period on the DEIS was from July 29, 1994 through September 27, 1994.

An Open House was held on August 31, 1994 at the Hospitality Inn in Dickinson, North Dakota, and on September 1, 1994 at the North Dakota Game and Fish Department in Bismarck, North Dakota.

Additional information on the public involvement process is contained in Chapter V of the FEIS. Chapter V also contains the text of all of the comments received, as well as the Forest Service response to those comments.

## V. ENVIRONMENTAL ANALYSIS

The analysis process is more fully defined in the FEIS and follows the procedures outlined in Forest Service regulations 36 CFR 228.102(c) (1), (2), (3) and (4).

These regulations direct the Forest Service to:

- Identify on maps those areas open to development subject to standard lease terms; those areas open to development subject to constraining stipulations; and those areas closed to leasing.
- Identify alternatives to these areas, including that of not allowing leasing.
- Project the type/amount of post-leasing activity that is reasonably foreseeable as a consequence of conducting a leasing program consistent with that described in the proposal and for each alternative.
- Analyze the reasonable foreseeable impacts of post-leasing activity projected under paragraph (c)(3) of this section.

## A. IDENTIFY ALTERNATIVES

A full array of alternatives was considered in the FEIS as briefly discussed in Section VI in this ROD. The range of alternatives was designed to satisfy NEPA requirements, to respond to the issues raised through public scoping, and to respond to comments on the DEIS.

## B. OIL AND GAS ACTIVITY SCENARIO

One of the tools used in this analysis is the Oil and Gas Activity Scenario. This includes the Reasonably Foreseeable Development Scenario (RFD), and a map of projected well locations. A full description of this scenario is included in the FEIS, Appendix E, and is discussed briefly below:

An **RFD** is a prediction by the BLM specialists of oil and gas activities based on current geologic and other scientific knowledge of an area, and includes consideration of crude oil prices. For the Southern Little Missouri project area, located within the Williston Basin, the RFD projects between 90 and 130 wells may be drilled over the next 15 years. Activity is not likely to be consistent on a year-to-year basis over the next 15 years, and the rate could be accelerated or delayed should unforeseen developments occur which affect exploration and development strategies. The RFD predicts about a 75 per cent success rate for these wells. For the Cedar River project area, only two wells are projected due to its location in a low oil and gas occurrence potential area, and both are expected to be dry holes.

Exploration and development of the oil and gas resources requires construction of drill pads, roads, tank batteries, power lines, and pipelines (see FEIS Appendix C). The **RFD Map,** prepared by Forest Service specialists, projects the locations of these oil and gas wells to be drilled in the two project areas, regardless of surface/subsurface ownership and any existing surface use restrictions, for the purpose of site-specific analysis. These anticipated locations of roads and drill pads are valid for determining the types of impacts associated with development as well as to display the expected level of development for cumulative effects analysis.

Each well drilled requires construction of a level pad of two to five acres. The pad serves as a staging area for setting up the rig and contains the reserve pit, storage tanks and other equipment and installations necessary for drilling. Crew quarters may also be temporarily located on the pad. When the well is completed, the portions of the pad not required for ongoing operations are recontoured and revegetated. If the well is plugged and abandoned, the entire pad and access road are reclaimed.

Roads are required for oil and gas development to allow access for drilling and ongoing operations and maintenance. Individual roads are designed and constructed to standards appropriate to the type and frequency of traffic expected. After wells are abandoned, roads that lead to them are reclaimed unless the road is made part of the permanent Forest transportation system.

Electrical power for producing well operations could be provided by either a powerline or on-site diesel generator. A powerline is usually preferred for most sites because of the maintenance costs, noise, and air pollution problems associated with on-site generators. Generators may be the most economical option at remote sites far from the existing power grid.

If a well produces natural and/or hydrogen sulfide gas, the gas must be piped to a central collection system or flared on-site, according to North Dakota air quality standards. Produced water must also be properly disposed of. Wells drilled in formations that would be targeted in this area typically produce no hydrogen sulfide and relatively small quantities of water. Flaring is often done while the well is being completed and until a pipeline can be connected. Produced water (and oil) must either be piped away or stored in tank batteries on-site for periodic removal by truck.

## C. ANALYSIS OF IMPACTS

The impacts associated with oil and gas development that could result from leasing was assessed by identifying the surface uses that would be associated with the wells predicted by the RFD. Those uses were then analyzed

by various methods to predict effects on the surface resources identified as issues of concern through scoping. The economic effects of the restrictions on oil and gas development were also analyzed.

In addition to mapping the projected well locations, each of the resources identified in the issues were mapped. The Custer Forest management areas (FEIS, Chapter III) and current road and existing well locations were also mapped. All of this information was entered into a geographic information system (GIS) for assistance in spacial analysis. Most of these resources are displayed in the FEIS, and all of them are included in the project file. Some data bases, such as cultural, were not presented in the FEIS due to the sensitivity of the data.

Forest resource specialists identified areas with potential multiple uses based on the GIS and the maps. The specialists then analyzed the intensity of one use versus another to develop the compatibility of the uses and the effects of leasing and subsequent development on other resources. Resources such as air were analyzed through interpretive models.

## VI. ALTERNATIVES CONSIDERED

There are two decisions to be made based on the FEIS; consequently there were two sets of alternatives developed for those decisions. The ID Team developed three availability alternatives and seven leasing alternatives, as briefly described below:

### A. AVAILABILITY ALTERNATIVES

#### Alternative D-1 - No Action

This alternative would make all of the approximately 238,700 acres Federal surface/Federal minerals) in both project areas not administratively available for leasing. No new leases would be issued, existing leases would continue until expiration or, if held by production, until exploratory drilling and actual production ceased or the lessee relinquishes rights. Oil and gas exploration would continue at the current rate on existing Federal leases and on private minerals within the project area. Secondary and tertiary recovery of some oil fields would be hampered due to the checkerboard mineral ownership pattern. I did not select this alternative because it would not be responsive to the Congressional mandate and Forest Service policy to encourage the development of mineral resources on NFS lands.

#### Alternative D-2

This is the preferred alternative in both the DEIS and the FEIS. Under this alternative, all of both project areas would be administratively available for leasing except 1,840 acres which includes Limber Pine RNA, Pretty Butte and Black Butte Candidate SIAs, and the Amidon Administrative site. These areas are considered sensitive, and this alternative was developed in response to the concern over the mixed ownership patterns in each of them. I did not select this alternative because I feel that leasing these area while prohibiting surface occupancy on Fee, State and Federal surface within these areas for the purpose of accessing the Federal mineral estate is adequate protection.

#### Alternative D-3

Under this alternative, all of the approximately 238,700 acres in both project areas would be administratively available for leasing. This is the selected alternative for the administratively available decision.

### B. LEASING ALTERNATIVES

#### Alternative E-1 - No Action

Under this alternative, even though all Federal mineral acres may be administratively available (Alternative D-3), no new leases would be issued, nor would existing leased areas be re-offered for lease once the current leases expire. This alternative was included in response to the "No Action" NEPA requirement of 40 CFR 1502, the "No

Leasing" requirement of 36 CFR 228 Subpart E, and public scoping comments. This alternative would result in maximum protection for surface resources under Forest Service jurisdiction at the expense of oil and gas development. Limited oil and gas activities would continue as described under Availability Alternative D-1. I did not select this alternative because it would not be responsive to the Congressional mandate and Forest Service policy to encourage the development of mineral resources on NFS lands.

**Alternative E-2**

This alternative would modify the Forest Plan to require stricter protective measures for amenities such as roadless, wildlife, visual and recreational resources. This alternative was developed in response to certain issues, including the IRAs which would be leased NSO, and the Little Missouri River ¼ mile corridor and all bighorn sheep habitat, which would not be leased. I did not select this alternative because I feel that the river corridor and bighorn sheep habitat can be leased with adequate protection, and that most of the wildlife stipulations in this alternative are more restrictive than necessary for their protection during oil and gas development.

**Alternative E-3**

This alternative was developed to reflect the current management practices in the Forest Plan. It is very similar to the Forest Plan, but includes some additional restrictions based on new data gathered since the Forest Plan was issued in order to remain consistent with the intent of the Forest Plan. I did not select this alternative because it does not adequately address the roadless issue, the bighorn sheep study, new data concerning sage and sharptail grouse protection, and the potentially significant paleontological area near Marmarth.

**Alternative E-4**

This alternative would modify the Forest Plan to reduce protective measures for certain resources in order to allow for increased oil and gas development. It was recognized that certain resources, such as the IRAs, mule deer and antelope, have already realized impacts from the existing transportation in the project area. This alternative allowed for less restrictive measures in the previously impacted areas, while imposing NSO on the non-impacted areas. I did not select this alternative because it does not provide for adequate protection of most of the wildlife species of concern, does not consider the paleontological resources near Marmarth, and does not provide for improving on the existing conditions of the IRAs, and mule deer and antelope habitat.

**Alternative E-5**

This is the Standard Lease Terms alternative. Except for Limber Pine RNA, the Burning Coal Vein Campground and Traditional Use areas, all of the project areas would be leased without any additional resource protections beyond those provided under SLT. I did not select this alternative because it would not provide adequate protection for the majority of the resources of concern.

**Alternative E-6**

This was the preferred alternative in the DEIS. It was designed to achieve a balance of uses in the project areas, providing protection for the IRAs while allowing limited development along private access roads, and implementing adequate protection for surface resources, while allowing continued oil and gas development. It also addressed the Little Missouri River issue by not leasing it. I did not select this alternative because it would allow continued limited development within the IRAs and bighorn sheep habitat on Federal minerals. I did not select it because I feel that the river corridor can be leased with adequate protection.

**Alternative E-7**

This is the preferred alternative in the FEIS. This alternative was developed in response to public comments, and is an modification of Alternative E-6. All lands in the project areas would be leased with surface resource protections consistent with the intent of the Forest Plan as amended. The primary differences between this and Alternative E-6 is that no continued development would take place on Federal minerals within the IRAs and

bighorn sheep habitat, antelope winter range critical areas are more clearly defined, and the ¼ mile Little Missouri River corridor would be leased NSO such that no occupancy on Fee, State or Federal surface would be allowed within the corridor in order to access Federal minerals. This is the selected alternative for the leasing decision.

## VII. LEGAL CONTEXT IN WHICH DECISIONS ARE MADE

### A. THE OIL AND GAS LEASING REFORM ACT

The Leasing Reform Act of 1987 modified the authorities of the Secretaries of Interior and Agriculture. The Forest Service developed implementing regulations which defined the procedures to be used and established the foundation for decision making. The "Final Rule" was published in the Federal Register on March 21, 1990 (36 Code of Federal Regulations, Part 228, 100 et.seq.; 55 FR 10423.)

#### 1. Forest Service Regulations Implementing the Oil and Gas Leasing Reform Act

There are several decisions made in the process of going from the administratively available decision to development (refer to Chapter I for a complete description of this process). The Forest Service decisions made in this ROD are as follows:

- **36 CFR 228.102(d) Lands Administratively Available for Leasing**

The administratively available decision will determine which lands, if any, will be identified as available for leasing. The Forest Plan will be amended, if needed, at the same time so that the decision made on the basis of this FEIS will be consistent with the Forest Plan. Upon completion of the leasing analysis, the Forest Supervisor shall promptly notify the BLM as to the area or Forest-wide leasing decisions that have been made, that is, identify lands which have been made administratively available for leasing. This decision by itself does not authorize the BLM to lease these minerals.

This decision enables the oil and gas industry to know which NFS lands may be available now or in the future for leasing. Publication of this decision is intended to enable the oil and gas industry to undertake long-range planning.

- **36 CFR 228.102(e) - Leasing Decisions for Specific Lands**

The second decision is whether or not to lease specific lands, adn if leased, what stipulations will be applied. The Forest SUpervisor shall review the availability decision on which lands are administratively available for leasing and shall authorize the BLM to offer specific lands for lease subject to:

> Verifying that oil and gas leasing on the specific lands has been adequately addressed in a NEPA document, and is consistent with the Forest Plan,
>
> Ensuring that conditions of surface occupancy identified in section 228.102 (c) (1) are properly included as stipulations in resulting leases, and
>
> Determining that operations and development could be allowed somewhere on each proposed lease, except where stipulations will prohibit all surface occupancy.

Under this regulation, the Forest Service does make the specific decision to authorize leases on individual, specified areas of NFS land. The Forest Supervisor may decide to authorize for lease all the lands described as "administratively available" in the leasing analysis, or to lease a smaller portion of these lands at a given time.

Both of these decisions are documented in this Record of Decision.

Neither of these two decisions authorizes ground-disturbing activities. Implementing these two decisions will not necessarily result in surface disturbing activities. At a later time, a lessee may file an Application for Permit to Drill (APD) to propose development of a lease. This will be reviewed in a more site-specific NEPA process. That analysis will insure that the terms of the lease are enforced, and the associated decision will set the conditions for approval for the specific location of the APD.

### 2. BLM Regulations Implementing the Oil and Gas Reform Act

FOOGLRA resulted in a number of changes related to BLM regulations regarding issuance of leases (43 CFR 3101). Key regulations applicable to the decision being made herein include:

- **43 CFR 3101.7-1 General Requirements**

National Forest System lands, whether acquired or reserved from the public domain, are not to be leased without approval and recommendation of the Forest Service.

- **43 CFR 3101.7-2 Action by the Bureau of Land Management**

Where the Forest Service consents to leasing of National Forest System lands with required stipulations, the BLM must incorporate the stipulations into any lease which it may issue and may add additional stipulations.

## B. CUSTER FOREST PLAN

The Forest Plan and Record of Decision (ROD) for its accompanying FEIS were approved on June 10, 1987, as required by the National Forest Management Act of 1976. This long-range land and resource management plan provides for guidance for all natural resource management activities. Copies of the Forest Plan FEIS are available for review in the Forest Supervisor's Office, at all Ranger District Offices on the Forest, and in the Regional Forester's Office, Missoula, Montana. The Southern Little Missouri and Cedar River Oil and Gas Leasing FEIS tiers to the analysis made in the Custer National Forest Plan EIS.

### 1. Forest-wide Goals, Objectives, and Standards

The Forest Plan established forest-wide goals, objectives, and management standards. The Forest is divided into geographic subunits called management areas. The Forest Plan includes goals and standards for each of the different management areas, along with their resource potential and limitations. All of the management areas are described in Chapter III of the Forest Plan. There are specific standards by management area that affect oil and gas activities.

Management standards that relate specifically to oil and gas leasing cover the general topics of geophysical operations, leasing, exploration and development, reserved and outstanding mineral rights, saltwater spills, and resource damage from toxic drilling fluids. These areas are to be managed in relation to various legally mandated requirements including, but not limited to, those associated with floodplains, wetlands, water quality, endangered species, and cultural resources.

The goal of minerals management for National Forest System lands (Minerals Policy Act of 1970) is to be responsive to the National demand for energy and strategic minerals consistent with other resources objectives. The Forest is rich in energy resources and strategic minerals and is responding to the growing demand by making these products available for development. The Forest Plan recognizes that extraction of these mineral resources is important to the national public interest. The Forest Plan also recognizes that there are areas where recreation, wildlife habitat, or other resources are important. In these situations, measures will be taken to minimize adverse impacts to these values, or in some cases, the area will not be available for oil and gas development.

### 2. Relationship of Custer Forest Plan to Decisions in This ROD

The Forest Plan ROD identified all lands within this project areas as administratively available for consideration for oil and gas leasing. The selected alternative in this ROD confirms that all of these areas are administratively available for oil and gas leasing. The Forest Plan Standards and Guidelines are consistent with this ROD as a result of the changes included in the amendments in the Appendix.

## C. OIL AND GAS LEASING

Competitive and noncompetitive leases may be obtained for oil and gas exploration and development on lands owned or controlled by the Federal government. FOOGLRA requires all public lands available for oil and gas leasing must be offered first by competitive leasing at an oral auction. Noncompetitive oil and gas leases may be issued only after no competitive bids have been received for public lands. Both types of leases are issued for a period of ten years, and both types continue for the period oil and gas are produced in paying quantities. The maximum competitive lease sizes are 2,560 acres in the lower 48 states. The maximum noncompetitive lease size is 10,240 acres in all states.

### 1. Lease Restrictions

A lease does not convey an unlimited right to explore or an unlimited right to develop oil or gas resources found under the land. Leases are subject to terms and conditions. Additionally there are restrictions derived from legal statutes and measures to minimize adverse impacts to other resources and are generally characterized in a lease as stipulations. Stipulations modify the rights the government grants to a lessee. The stipulations are known by potential lessees prior to any sale and are applied at the time drilling is proposed. A detailed discussion of stipulations is in Appendix D of the Southern Little Missouri and Cedar River FEIS.

- **Standard Lease Terms and Conditions**

Standard lease terms are contained in Form 3100-11 (U.S. Department of Interior, Bureau of Land Management, June 1988), Offer to Lease and Lease for Oil and Gas. Under the standard lease terms, the lessee has the right to use as much of the leased lands as is necessary to explore for, drill for, extract, remove, and dispose of oil and gas deposits that may be in the leased lands. These rights are subject to stipulations that might be attached to the lease - restrictions deriving from specific, nondiscretionary statutes (such as the Clean Air Act), and reasonable measures that may be required to minimize adverse impacts to other resource values, land uses or users.

Such reasonable measures include, but are not limited to, modification to siting or design of facilities, timing of operations, and specification of interim and final reclamation measures. According to 43 CFR 3101.1-2, "At a minimum, measures shall be deemed consistent with lease rights granted provided that they do not: require relocation of proposed operations by more than 200 meters; require that operations be sited off the leasehold; or prohibit new surface-disturbing operations for a period in excess of 60 days in any lease year."

Under standard lease terms, the lessee is required to conduct operations in a manner that minimizes adverse impacts to the land, air, water, cultural, biological, visual, other resources, and other land uses or users. Areas to be disturbed may require inventories or special studies to determine the extent of impacts to resources.

- **Stipulations**

Stipulations intended to mitigate effects on surface resources beyond that required by the standard lease terms must be attached to the lease at the time it is issued. Consequently, the identification of stipulations in the determination of administratively available lands and their application is one purpose of the FEIS and the Record of Decision.

Stipulations only apply to the drill pad; its location, construction and use. Stipulations are only binding on the lease holder, and by themselves, do not regulate access and other related development and production activities. Stipulations also do not control other similar activities on the lease, such as roads for other projects,

and oil and gas roads, pipelines and transmission lines needed to access and service neighboring leases. These other uses are covered through the Forest Plan Management Standards.

The following stipulations are in accordance with the "Uniform Format for Oil and Gas Leasing Stipulations", as standardized in March, 1989 by the Rocky Mountain Regional Coordinating Committee, and were adopted by Custer National Forest in the Forest Plan Amendment #1 on March 29, 1991:

**No Surface Occupancy (NSO)** - The NSO stipulation is intended for use only when other stipulations are determined insufficient to adequately protect the resource values. An NSO stipulation is not needed if the desired protection could be accomplished by relocating proposed operations 200 meters or less as allowed under Standard Lease Terms. Generally, the Forest Plan Management Standards will preclude access and construction of other related facilities through resource areas that require an NSO stipulation. Also, surface occupancy generally would not be permitted in NSO areas in order to protect the Federal mineral estate in drainage cases.

**Controlled Surface Use (CSU)** - The CSU stipulation is intended to be used when fluid mineral occupancy and use are allowed on all or portions of the lease area year-round, but because of special resource concerns or values, lease activities must be strictly controlled. It will be used in areas where restrictions or controls are necessary for specific types of activities rather than all activities, and applies to development as well as production phases. It may be used to move drill pads further than 200 meters to protect a resource that is too small or extremely difficult to map, such as heads of canyons. The exact restriction will be determined at the APD level, however, the general requirements of this stipulation are included in this appendix for each resource.

**Timing Limitation (TL)** - The TL stipulation prohibits fluid mineral exploration and development activities for a time period of less than one year, and applies to all on-lease activities. It is intended to provide additional protection from exploratory drilling and construction in areas that may have important seasonal use, such as raptor nest sites and recreation use areas. If exploration is successful, the construction phase would end, the site would be stabilized, and the less intrusive production phase would begin on a year-round basis. A TL is not necessary if the time limitation involves the prohibition of new surface disturbing operations for periods of less than 60 days.

- **Waivers, Exceptions and Modifications (WEMs)**

A waiver, exception or modification if the Authorized Officer determines that the factors leading to its inclusion in the lease have changed sufficiently to make the protection provided by the stipulation no longer justified. Waivers, exceptions or modifications will be considered in accordance with the requirements of Title 36 CFR 228.104. Environmental analysis meeting the requirement of NEPA will be conducted in considering the request. The Authorized Officer's decision will be based on this information. Conditions WEMs will be discussed with each resource stipulation according to the following criteria (RMRCC, 1989):

**Waiver** - A waiver can be granted if the condition described in the stipulation no longer applies anywhere within the leasehold.

**Exception** - An exception can be granted on a case by case basis if the resource needing protection is not present in the area proposed for disturbance, or if the operator submits a plan that adequately protects the resource.

**Modification** - A modification is similar to an exception, but broader in scope, and involves a fundamental change to the provisions of the stipulation. It can be granted either temporarily or for the duration of the lease.

## VIII. FINDINGS REQUIRED BY OTHER LAWS, REGULATIONS, AND AGENCY POLICY

I have reviewed the results of the analysis as documented in the FEIS. I have determined that my decision is consistent with applicable laws, regulations, and agency policy. The following is my determination of consistency with major laws and policies.

## A. NATIONAL FOREST MANAGEMENT ACT

The National Forest Management Act requires all projects and activities be consistent with the Forest Plan. Following is a discussion related to each of the applicable elements as identified in Forest Service Handbook 1909.12, Section 5.31a.

- **Consistency [16 U.S.C. 1604(i)]**

With the nonsignificant Forest Plan amendments that are described above in Section II.D., my availability and specific lands leasing decisions are consistent with the Forest Plan as amended. The full texts of these amendments are included in the Appendix.

- **Suitability for Timber Production [36 CFR 219.27(c)(1)]**

This is not applicable as this project does not propose any timber harvest.

- **Clearcutting and Even-aged Management [16 U.S.C. 1604(g) and 36 CFR 219.27(d)]**

This is not applicable as this project does not propose any timber harvest.

- **Vegetative Manipulation [36 CFR 219.27(b)]**

This is not applicable as this project does not involve vegetative manipulation of tree cover. My decision specifically requires that dominant and codominant trees not be cut in ponderosa pine stands, and that activities in riparian and woody draws will minimize disturbance to woody vegetation.

- **Sensitive Species (Forest Service Manual 2607.32)**

The potential effects of this project on sensitive species have been analyzed and documented in Chapter IV and in the Biological Evaluation Appendix of the FEIS. Individuals of a population may be effected, but there will be no trend towards Federal listing or loss of viability of any of the sensitive species due to oil and gas leasing.

## B. ENDANGERED SPECIES ACT

The US Fish and Wildlife Service (FWS) has been consulted with as required by the Endangered Species Act. The FWS provided the current list of threatened and endangered species for us to consider in our analysis. The potential effects of this project on these threatened and endangered species have been analyzed and documented in Chapter IV and in the Biological Assessment Appendix of the FEIS. This project will have no effect on any of the listed species, except for the black-footed ferret. For that species, the determination was "not likely to adversely affect." Through informal consultation, the FWS has agreed with these determinations.

## C. NATIONAL HISTORIC PRESERVATION ACT

The Forest Service undertook a phased compliance approach for this FEIS to insure that the historic properties were considered at this early stage of planning as well as during development. This approach was reviewed by the North Dakota State Preservation Office and is in compliance with the National Historic Preservation Act (NHPA). Protective measures for historic properties with traditional ties were discussed and approved by cultural representatives of the Mandan and Hidatsa tribes.

# IX. ENVIRONMENTALLY PREFERRED ALTERNATIVE

Alternatives D-1 and E-1 are the environmentally preferred alternatives. Under Alternative D-1, no lands would be made administratively available for new leasing, and consequently there would be no leasing of specific lands. Under Alternative E-1, no Federal minerals, regardless of whether they are made administratively available, would be considered for lease issuance. Existing leases would be valid until they expired.

## X. MITIGATION

Appendix D of the FEIS lists the stipulations developed to reduce the environmental effects on surface resources. Also, Appendix G of the FEIS lists the Conditions of Approval applicable at the APD stage. The measures identified are for all action alternatives and are discussed in Chapter IV of the FEIS as ways of mitigating the effects of each alternative on surface resources. These stipulations must be accepted by the lessee as a part of the lease. These stipulations represent what I consider to be the best means of avoiding or minimizing environmental impacts that may arise from the project, and of meeting the integrated resource management requirements of the Forest Plan. In addition, these stipulations represent all practicable means to avoid or minimize environmental harm from the alternative selected. These mitigation measures are an integral part of my decision.

## XI. MONITORING AND EVALUATION

The implementation and effectiveness of this decision will be tracked through a monitoring and evaluation process. This process and most of the needed monitoring elements are described in the Forest Plan, as amended (pages 102-110). Information gained through this process will not only profit this project, but also future oil and gas leasing efforts. The results of monitoring and evaluation will be documented in the periodic Custer Forest Plan Monitoring Report.

After lease issuance, exploration, development and production activities will be identified in a Surface Use Plan of Operations, and may be subject to further monitoring requirements. Monitoring occurs at several stages between the Forest Plan and on-the-ground implementation:

1. The environmental analysis at the APD stage is monitored to ensure Forest Plan Standards and guidelines are incorporated into the project proposal.

2. Lease preparation and review of the surface use plan of operation are monitored to insure inclusion of appropriate standards and mitigation measures.

3. On-the-ground implementation is monitored to determine if the mitigation measures are being implemented as designed.

4. Following implementation, the results are evaluated against Forest Plan standards to see if the desired results were achieved or adjustments are needed.

Monitoring these elements may indicate additional or different monitoring needs. As additional needs are identified, they will be added to the monitoring requirements for this project and, as appropriate, in the Forest Plan.

## XII. IMPLEMENTATION

### A. LEASE ISSUANCE

The decisions identified in this Record of Decision shall be implemented in the following manner:

1. The decisions for availability, leasing and to amend the Forest Plan will be implemented following the required waiting period in 36 CFR 215.10 after the legal notice of this Record of Decision is published in the *Bismarck Tribune*. In addition, copies of this Record of Decision will be sent to those who have requested notice of Forest Plan amendments and those who have participated in this analysis process.

2. In accordance with 36 CFR 228.102(d), the Forest Service shall promptly notify the BLM as to the area or forest-wide leasing decisions that have been made, that is, identify lands which have been found administratively available for leasing.

3. In accordance with 36 CFR 228.102(e), available unleased lands for which the Forest Service has authorized the BLM to offer for lease will be submitted to the BLM to offer for lease in the next available lease sale as soon as the Forest Service takes administrative action to parcel the land and attach the appropriate stipulations as identified in this FEIS and ROD. An exception to this are those lands that I indicated that I will withhold from authorization for a period of time pending the completion of a proposed mineral exchange.

The actions described in the preceeding paragraph are administrative functions implementing the decisions of this ROD and are not appealable.

Not all leases will be offered at the same lease sale. There will be a number of lease sales. Priority for lands being offered for lease will include whether: a) they are nominated by the industry; b) if BLM identifies the lands as subject to drainage; c) if the lands had a pre-sale offer. If the lands in the parcels do not receive a bid at a sale, they will be available for noncompetitive offers for a two-year period.

### B. POST LEASING ACTIVITIES

Following lease issuance, a lessee/operator may submit an Application for Permit to Drill (APD) and Surface Use Plan of Operations (SUPO). A lessee/operator may not conduct on-the-ground activities without an approved APD and SUPO. The BLM will forward the application and the proposed Surface Use Plan of Operations to the Forest Service and an environmental analysis, tiered to the FEIS, will be completed. The Deciding Officer of an APD analysis may:

1. Approve the plan as submitted,

2. Approve the plan subject to specific conditions of approval, or

3. Disapprove the plan with stated reasons (36 CFR 228.107).

This decision is not being made in this ROD.

The analysis contained in the FEIS, upon which the decisions in this ROD are based, rely on current resource inventories. As new information becomes known, any of these decisions that have not been implemented will be reassessed in light of this new information. Any resultant changes in these decisions will apply only to those lands that have not yet been leased.

## XIII. APPEAL PROCEDURES

### A. FOREST SERVICE APPEAL PROCEDURES

Under the authority of the Federal Onshore Oil and Gas Leasing Reform Act, and the implementing regulations in 36 CFR 228.102(d) and (e), the Forest Service is responsible for the following: decisions on which lands are administratively available for leasing; and leasing decisions for specific lands. Also included in the Forest Service decision are several non-significant Forest Plan amendments. These three decision areas constitute *one* decision for appeal purposes.

This decision is subject to appeal pursuant to 36 CFR 215.7. The written Notice of Appeal must be submitted within 45 days (appeal filing period) from the date of the legal notice of this decision in the *Bismarck Tribune* newspaper, Bismarck, North Dakota to:

John Hughes, Acting Regional Forester
USDA, Forest Service, Northern Region
P.O. Box 7669
Missoula, MT 59807

If no appeal is received, implementation of this decision may occur on, but not before, five business days from the close of the appeal filing period (45 days from legal notice of the decision). If an appeal is received implementation may not occur for 15 days following the date of appeal disposition.

## B. BUREAU OF LAND MANAGEMENT APPEAL PROCEDURES

The decision made herein by the BLM may be appealed to the Board of Land Appeals, Office of the Secretary, in accordance with the regulations at 43 CFR Part 4 Subpart E. A notice of appeal must be filed within 30 days beginning the day following the date of publication of the notice of this decision in the Bismarck Tribune (Bismarck, North Dakota). The notice of appeal must be filed in the Montana State Office, BLM, 222 North 32nd Street, PO Box 36800, Billings, MT 59107-6800. A copy of such notice must also be provided to the Field Solicitor, US Department of the Interior, PO Box 31394, Billings, MT 59107-1394.

Within 30 days after filing the notice of appeal, a complete statement of the reasons for the appeal must be filed with the United States Department of the Interior, Office of the Secretary, Board of Land Appeals, 4015 Wilson Blvd., Arlington, VA 22203 (see 43 CFR 4.412 and 4.413). If the reasons for the appeal are fully stated when filing the notice of appeal, no additional statement is necessary. A copy of the statement of reasons must also be provided to the Field Solicitor.

Within 15 days after each document is filed, each adverse party named in the decision and the Field Solicitor (address: United States Department of the Interior, PO Box 31394, Billings, MT 59107-1394) must be served with a copy of the notice of appeal, the statement of reasons, and any other documents filed as part of the appeal.

Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of the Secretary, Board of Land Appeals, 4015 Wilson Blvd., Arlington, VA 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (see 43 CFR 4.401(c)(2)).

Unless these procedures are followed, an appeal will be subject to dismissal by the Interior Board of Land Appeals. The appellant has the burden of showing that the decision appealed from is in error.

These decisions will become effective at the expiration of the time for filing a Notice of Appeal unless a petition for a stay of the decision is timely filed with the Notice of Appeal. See 43 CFR 4.21(a). The provisions of 43 CFR 4.21(b) define the standards and procedures for filing a petition to obtain a stay pending appeal.

## XIV. CONTACT PERSON

For additional information, contact:

Greg Visconty, Team Leader
Custer National Forest
P.O. Box 2556
Billings, MT 59103
Phone (406) 657-6361

# APPENDIX

# FOREST PLAN AMENDMENTS

**Forest Plan Amendment Number 29**
**Custer National Forest**
**Billings, Montana**

The Custer National Forest Land and Resource Management Plan is amended as follows:

The stipulations to be applied to new oil and gas leases as identified in Amendment Number 1 are modified as described below.

**DELETE** the following stipulations:

| Mgmt. Areas | Area or Rationale the Stipulation Applies to | Forest Plan Stipulations | New Stipulation |
|---|---|---|---|
| A, G | Protect key wildlife and/or habitats (see Key Species/ Critical Timing Periods in section II). | **Lease Stipulations and Timing Restrictions** | **Timing Limitation Stipulation (Seasonal Restriction)** |
| D | Protection of roadless values in the Tracy Mountain-Moody Plateau and Bullion Buttes-Ponderosa Pine areas However an exception will be granted if oil and gas production is established on an adjacent private/state lands; if this occurs, surface occupancy will be allowed on the adjacent spacing unit of federal ownership in order to protect the federal mineral estate. | **No Surface Occupancy Stipulation** | **No Surface Occupancy Stipulation** |
| F | Protect recreation corridors. Prohibit occupancy within ¼ mile of developed sites from May 15 to September 15. | **Surface Occupancy Restriction Stipulations (timing)** | **Timing Limitation Stipulation (Seasonal Restriction)** |
| M | To minimize surface disturbance in riparian areas. | **Limited Surface Use Stipulation** | **Lease Notice** |

And **REPLACE** them with the following stipulations:

| Mgmt. Areas | Area or Resource the Stipulation Applies to | Stipulation |
|---|---|---|
| A, B, C, D, G | Protect key wildlife and/or habitats (see Key Species/Critical Timing Periods in Chapter II, page 19). | **No Surface Occupancy and Timing Limitation (Seasonal Restriction)** |

| Mgmt. Areas | Area or Resource the Stipulation Applies to | Stipulation |
|---|---|---|
| B, C, D | Protect the roadless values in the Bullion Butte, Kinley Plateau, and Stom-Hanson Inventoried Roadless Areas (as identified in Appendix C of the Forest Plan FEIS). The second sentence of Provision 5.c.4 on page 55 of the Forest Plan concerning drainage of federal minerals is made not applicable for the area occupied by the Bullion Butte and Kinley Plateau roadless areas within Management Area D. | **No Surface Occupancy** |
| D | Protect stands of ponderosa pine as mapped in the Southern Little Missouri and Cedar River Oil and Gas Leasing FEIS. Access and other associated development and production facilities will be routed to avoid cutting dominant and codominant trees (defined in the glossary in the Southern Little Missouri FEIS). Visual Quality Objective within foreground of these ponderosa pine stands is retention. | **No Surface Occupancy** |
| F | Protect recreation corridors. Prohibit occupancy within ¼ mile of developed sites from May 15 to September 15. This restriction of activities within ¼ mile of Burning Coal Vein Campground will apply from May 15 to December 1 annually. | **Timing Limitation (Seasonal Restriction)** |
| M | Minimize surface disturbance in riparian areas. Drill pads will not be located within the riparian ecosystem, and will be located to avoid disturbance to the distinctive vegetative communities within the riparian ecosystems. Access and other accociated development and production facilities will be routed to cross riparian areas at right angles to minimize road lengths, to maintain stream gradients, and to prevent sedimentation in the streams. | **Controlled Surface Use** |

The following stipulations are also **ADDED**:

| Mgmt. Areas | Area or Resource the Stipulation Applies to | Stipulation |
|---|---|---|
| B, D | Protect known geologic outcrops in the Bullion Creek and Slope Type Section Nominated Geologic SIAs, and in the Cannonball /Slope Outcrop Nominated Geologic SIA. Predevelopment surveys will also be required to specifically identify outcrops for which these SIAs were nominated. | **Controlled Surface Use** |
| B, D | Protect paleontological resources in the Marmarth area (as identified on the paleontological map in the project file for the SLM/CR FEIS). A predevelopment survey will also be required to specifically identify these resources in advance of development. | **Controlled Surface Use** |

- End Amendment Number 29 -

**Forest Plan Amendment Number 30**
**Custer National Forest**
**Billings, Montana**

The Custer National Forest Land and Resource Management Plan is amended as follows:

The dates and disturbance zones shown for key species on pages 19 and 172, as amended by Amendment Number 12, are changed to read as follows (actual changes made by this amendment are shown in ***bold, underlined and italicized*** text):

**Bighorn Sheep in North Dakota**

***Yearlong for its range within the Southern Little Missouri and Cedar River Oil and Gas Leasing Analysis Area (NSO in oil and gas leases).***

**For the remainder of its range:**
**Breeding:** October 15 to December 1
**Lambing:** April 1 to June 15
**Winter Range:** December 1 to April 1

**Bighorn Sheep in Montana**
**Stillwater Herd**
**Winter Range:** November 1 to June 1
**Lambing:** June 1 to June 15

**Rock Creek Herd**
**Winter Range:** November 1 to July 1*

**West Rosebud Herd**
**Winter Range:** November 1 to May 1**
**Lambing:** May 1 to July 10

**Pryors**
**Winter Range:** November 1 to June 15***

* Lambing occurs on the winter range.
** This herd winters within the wilderness boundary, but moves to a lower elevation for spring range, and lambing occurs on this spring range.
*** The Pryors herd appears to lamb on the winter ranges. However, there appears to be little change in habitats used in winter or summer.

**Elk**
**Winter Range:** November 30 to June 15*
**Calving Areas:** June 1 to July 1

* On the winter ranges on the Beartooth Ranger District, especially in the Line Creek area, the elk move onto the winter ranges in late October. These areas are of high value during this period and harassment places unneeded stress on these animals.

**Antelope**

***Winter Range within the Southern Little Missouri and Cedar River Oil and Gas Leasing Analysis Area: January 1 through March 31 (TL in oil and gas leases).***

***No disturbance around isolated clay buttes as mapped in the Southern Little Missouri and Cedar River Oil and Gas Leasing FEIS (NSO in oil and gas leases).***

**Golden Eagle**

**Nesting:** ***February 1*** through ***July 31***

**Disturbance Zones:** no disturbance for ***½ mile*** radius around the nest (NSO stipulation on oil and gas leases). This distance could be reduced in the presence of a physical barrier between the nest and the proposed activity that would limit visibility from the nest. The actual disturbance zone determination would require an on-the-ground biological review.

**Bald Eagle**

**Inactive Nests:** February 15 to May 1

**Active Nests:** February 15 to July 15

**Disturbance Zones:** no disturbance for ¼ mile radius around the nest (NSO stipulation on oil and gas leases), and no disturbance for ½ mile during nesting (TL in oil and gas leases). This distance could be reduced in the presence of a physical barrier between the nest and the proposed activity that would limit visibility from the nest. The actual disturbance zone determination would require an on-the-ground biological review.

**Ferrurginous Hawk**

**Nesting:** ***March 1 through August 1***

**Disturbance Zones:** ***no disturbance for ½ mile radius around the nest (NSO stipulation in oil and gas leases), and no disturbance during nesting for one mile (TL stipulation in oil and gas leases). This distance could be reduced in the presence of a physical barrier between the nest and the proposed activity that would limit visibility from the nest. The actual disturbance zone determination would require an on-the-ground biological review.***

**Prairie Falcon**

**Nesting:** ***March 1*** through ***July 31***

**Disturbance Zones:** no disturbance for ***½ mile*** radius around the nest (NSO stipulation in oil and gas leases). This distance could be reduced in the presence of a physical barrier between the nest and the proposed activity that would limit visibility from the nest. The actual disturbance zone determination would require an on-the-ground biological review.

**Peregrine Falcon**

**Nesting:** March 15 to July 20 or fledging

**Disturbance Zones:** no disturbance for ¼ mile radius around the nest (NSO stipulation in oil and gas leases). This distance could be reduced in the presence of a physical barrier between the nest and the proposed activity that would limit visibility from the nest. The actual disturbance zone determination would require an on-the-ground biological review.

**Merlins**

**Nesting:** March 15 to July 15 or fledging

**Disturbance Zones:** no disturbance for ¼ mile radius around the nest (NSO stipulation in oil and gas leases). This distance could be reduced in the presence of a physical barrier between the nest and the proposed activity that would limit visibility from the nest. The actual disturbance zone determination would require an on-the-ground biological review.

**Prairie Grouse**

**Dancing Grounds:** March 1 through ***June 15***

**Disturbance Zones:** no disturbance for ¼ mile radius around active leks (line of sight up to this distance)(NSO stipulation in oil and gas leases), ***and no disturbance within suitable nesting***

***habitat during the above period for a one mile radius for sharp-tailed grouse and a two mile radius for sage grouse (TL stipulation in oil and gas leases).***

The following definitions are **added** to the glossary on page 121:

**Active Lek** Displaying grouse present during the spring breeding season at least one year within a period of five consecutive years. Leks are assumed to be active in the absence of five consecutive years of data collected according to scientific methods which shows the lek to be inactive. Scientific data collection assumes qualified observers, survey times and conditions appropriate to detect breeding activity, and subsequent written reports. Results of surveys and a list of active leks are part of the Custer Forest Plan Monitoring and Evaluation Report (Monitoring Item: C2 - sensitive species, C-9 - prairie grouse). Any lek for which five consecutive years of survey data is lacking is assumed to be active.

**Active Nest** An adult pair present at least one year within a period of five consecutive years. Nests are assumed to be active in the absence of five consecutive years of data collected according to scientific methods which shows the nest to be inactive. Scientific data collection assumes qualified observers, survey times and conditions appropriate to detect nesting activity, and subsequent written reports. The reporting process for results of surveys and a list of active nests are part of the Custer Forest Plan Monitoring and Evaluation Report (Monitoring Item: C2 - Sensitive Species, C8 - Special Interest). Evidence that a pair is present within a nesting territory can be based on evidence that eggs were laid or observations of two breeding-age birds that appear to be paired. In some species, the presence of a nest that has been recently built, repaired, or decorated may constitute evidence for occupancy because nest building behavior is probably elicited by the presence of a mate.

- End Amendment Number 30 -

**Forest Plan Amendment Number 31**
**Custer National Forest**
**Billings, Montana**

The Custer National Forest Land and Resource Management Plan is amended as follows:

The following is **added** to the table on pages 77 and 78, as replaced by Amendment Number 18:

**Name:** Round Top Butte
**Status:** Candidate Botanical SIA
**Ranger District:** Medora
**Acres:** 60 (estimated)

- End Amendment Number 31-